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**Human rights situation in Palestine and other occupied Arab territories**

# Note verbale dated 22 June 2017 from the Permanent Mission of Israel to the United Nations Office and other international organizations in Geneva addressed to the secretariat of the Human Rights Council

The Permanent Mission of Israel to the United Nations Office and other international organizations in Geneva presents its compliments to the secretariat of the Human Rights Council and has the honour to request that the letter dated 22 June 2017 from the Permanent Representative, Ambassador Aviva Raz Shechter, addressed to the United Nations High Commissioner for Human Rights be circulated as a document of the thirty-fifth session of the Human Rights Council (see annex).* The letter contains the response of Israel to the recent report of the High Commissioner on ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory and its addendum (A/HRC/35/19 and Add.1).

* Reproduced as received, in the language of submission only.

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## Annex to the note verbale dated 22 June 2017 from the Permanent Mission of Israel to the United Nations Office and other international organizations in Geneva addressed to the secretariat of the Human Rights Council

## Letter dated 22 June 2017 from the Permanent Representative of Israel to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

Excellency,

It is with great dismay that I am writing to you, with regards to the recent Report published by OHCHR on the issue of "ensuring accountability for all violations of international law in the OPT" (A/HRC/35/19), as well as the Addendum to the Report (A/HRC/35/19/Add.1).

It is unfortunate that the Report and Addendum fail to provide anything approaching a fair or objective analysis of the situation in both legal and factual terms. Israel's disappointment with this biased treatment is all the more profound given the opportunity the OHCHR had in preparing this report to distance itself from the politicization and one-sidedness of the Council itself and demonstrate greater objectivity and impartiality, while making use of publicly available material from both Israeli and international official sources in order to accurately reflect the status of implementation of the various recommendations mentioned in the report and the context in which they need to be considered. The unfortunate result of the Report is to reinforce the negative perceptions, both within Israel and well beyond it, of the Human Rights Council and the OHCHR as irreparably biased and politicized.

Rather than seek to correct the imbalance of the Council's one-sided treatment of Israel, the Report intensifies the Council's distorted narrative, ignoring the broader context of terrorism and security threats that Israel faces, and drawing a moral equivalency between Israel — a democracy struggling in complex circumstances to uphold the rule of law while defending its citizens — and the terrorists that deliberately target them.

Without addressing all the egregious and problematic features of the Report and the Addendum, I include below some particularly troubling elements which serve to demonstrate the unfairness and unprofessionalism that characterize the Report and Addendum as a whole.

**Unprecedented and *Ultra Vires* reference to the ICJ**: The unprecedented and far-reaching reference made in the report with respect to the option of seeking an Advisory Opinion from the International Court of Justice (**Report — para.75**), demonstrates a highly selective approach in the Council's treatment of Israel, and should be rejected as a politically motivated attempt to further intensify the UN's singular obsession with Israel. This suggestion clearly exceeds the mandate given to the OHCHR in preparing this report, and demonstrates a preference for active promotion of a political agenda over the fulfillment of its obligations to remain neutral and objective.

**The adoption of an inherently flawed methodology**: Another glaring problem with the entire Report is the fact that it is based on a flawed 'scorecard approach' which attempts to present seemingly 'scientific' statistical analysis regarding the extent of Israeli compliance with hundreds of UN resolutions and recommendations. This methodology is flawed at its very core and, accordingly, calls into question the findings of this Report in their entirety. It is a well-known fact that countless UN resolutions highly critical of Israel are 'born in sin' and are completely devoid of any legal, factual or historical accuracy. Innumerable resolutions are rife with gross inaccuracies and are merely the result of a one-sided, anti-Israel political agenda. In fact, many of the countless anti-Israeli resolutions and recommendations upon which the OHCHR's statistical analysis is based are simply reiterations and repetitions of previous anti-Israel resolutions and recommendations.

Accordingly, to use this mountain of resolutions and recommendations as an 'objective' basis to 'measure' the extent of Israel's compliance with the law is intellectually dishonest and entirely misleading. This type of subjective and flawed methodology acts to compound an existing bias in ways bound to embolden to further false narratives.

**An offensive moral equivalency**: One of the major flaws in both the Report and the Addendum is a disturbing moral equivalency drawn between Israel and Palestinian terror organizations. The Report has as one of its premises the notion that Israel's robust investigation system can be equated to the absolute lack of accountability of the "Gaza authorities", a euphemism used to refer to the Hamas terror organization. This is best exemplified in the illustration provided in the Addendum regarding recommendations on "Accountability and access to justice".

One striking example of this distorted view is the omission of Hamas from Table 2, which purports to summarize the implementation of the recommendations by each party. Paradoxically, according to OHCHR, Hamas' complete lack of accountability entitles it to a total exemption from scrutiny.

The notion that Israel's investigation mechanisms — which have been thoroughly and publicly evaluated in recent years by both leading Israeli jurists and highly-respected international observers and deemed to be comparable with "the best in the world" — can be equated and placed on a plane similar to "Palestinian investigation mechanisms" is outrageous.

Even the United Nations Committee of Experts, which the OHCHR references (**Report — para. 23**), has documented the extremely limited, if not non-existent, implementation by the Palestinian side of recommendations regarding the establishment and operation of investigation mechanisms. Indeed, the Committee determined that even those limited incidents that are described as being investigated are only instances in which there were Palestinian and not Israeli or Jewish victims. It is striking that the OHCHR attempts to gloss over this fact and other deficiencies by citing these experts as stating that investigations into rocket attacks on Israeli territory had been "**undertaken** ... in a "comprehensive manner" (**Report — para. 23** citing A/HRC/16/24, para. 53) (emphasis added) — without any evidence of actual action in or findings from these investigations. In contrast, the Report seeks to disparage Israel's investigation mechanisms even though they are rigorously undertaking ongoing investigations regarding hundreds of alleged violations, using mechanisms currently in place, while the Israeli government is continuously studying ways to reform and improve its mechanisms even further.

**An attempt to disparage a well-established, world-renowned legal system**: Israel is a law-abiding State that has created robust investigation and review mechanisms that lead to criminal investigation and prosecution where necessary. Israeli courts are some of the most independent and impartial courts in the world, respected by other national courts and well reputed international jurists alike. Moreover, the Israeli system is constantly reviewing and reforming itself to meet the highest standards and best practices. The fact that the Report and Addendum draw a comparison between Israel's legal system and Hamas is appalling and once again points to its overall inherently biased approach towards Israel. The Palestinian authority and Hamas have done absolutely nothing in order to investigate or examine the criminal allegations raised against them. In light of these facts, it is inconceivable that the recommendation of the report concerning both systems is identical, and the language used towards Israel is even harsher.

It is regrettable that the Report or Addendum did not find it fit to provide a serious discussion of Israel's robust investigation mechanisms, including a description of the dual and separate roles of the Military Advocate General, which have been elaborated upon and explained in great detail in official Israeli reports.[1] If the OHCHR takes issue with Israel's categorization of its investigation system and the roles of the MAG, it should have at the very least noted Israel's position.

[1] The 2014 Gaza Conflict — Factual and Legal Aspects, May 2015, paragraphs 422–431. http://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf.

Indeed, throughout its analysis of the section of "Accountability and access to justice", the Report willfully ignores the legal reality which is thoroughly described in publicly sourced information.[2] For instance, the Report castigates Israel for its low conviction rate for IHL violations (**para. 19-20**) but fails to properly consider the practical and legal challenges that Israel faces in conducting investigations in the context of armed conflicts, which are outlined succinctly in Israel's comprehensive report about the 2014 Gaza Conflict.[3] Even when Israeli concerns are briefly mentioned in the Addendum, they are summarily dismissed and not taken into consideration, and are certainly not reflected in the main body of the Report.

Likewise, the Report mentions in passing that "little information" is available about reviews of military policy that Israel has undertaken, when, in fact, concrete examples are available in the Israeli report on the 2014 Gaza Conflict, in periodic updates of investigations published by the IDF, in analyses conducted by outside experts and in media reports. Even in the rare instance where these reviews are mentioned (**Addendum — para. 17**), it is only to disparage them, rather than highlight the robustness of the Israeli investigative system.

The case of El-Or Azaria demonstrates how the Military Justice system acted without fault, unlike what is alleged in the Addendum (**para. 16**). Indeed, a criminal investigation was immediately launched and a decision to charge Azaria with the offence of manslaughter, carrying a maximum penalty of twenty years imprisonment, was reached soon thereafter. Throughout this process, IDF commanders, including the Chief of Staff, as well as the Minister of Defense, gave complete support to the Military Justice system, which was completely undeterred despite the heightened public debate. Azaria was eventually convicted of the offence of manslaughter and sentenced to 18 months imprisonment. The MAG appealed the sentence and the appeal is still pending.

**An analysis that ignores the context, in particular Palestinian terror**: Time and again the Report overlooks the broader context, whereby Israel, a democracy, is confronted by a continuous security threat posed by Palestinian terror. A clear example of this appears in **paragraphs 31-32** of the Report, where it cites an increase in the number of Palestinian minors in detention, and yet fails to refer to, let alone criticize, the extensive use and involvement of Palestinian minors in many of the terrorist attacks that Israel has faced in the last year.

To demonstrate the outrageous character of this omission, it is worth noting that such attacks by Palestinian minors include: the cruel and violent murder of a mother by a Palestinian minor on the doorsteps of her own home, in front of her own children; the murder of a 13 year-old Israeli girl by a Palestinian minor while she was asleep in her bed; the stabbing of a pregnant Israeli woman by a Palestinian minor; the murder of a young Israeli woman who was taking a stroll in her neighborhood; the stabbing attack at a supermarket and the murder of an off-duty soldier who attempted to thwart the attack; all of which were reported extensively in the media.

The Report's failure to engage in any serious discussion of the ongoing terrorist threat which Israel faces, or to even mention the fundamental role that Palestinian incitement and terrorism play in shaping the reality on the ground is not merely a failure to properly frame and analyze the status of the implementation of recommendations as this report purports to do. Neglecting to recognize the terrorist threat highlights the OHCHR's failure to engage in a neutral and impartial fulfillment of its mandate, and instead suggests that the office has adopted the political and biased agenda of the Council against Israel as its own.

The Report not only turns a blind eye to the backdrop of increased terror activity in the region and Israel's need to protect its civilians as a result of this heightened activity, but

[2] The 2014 Gaza Conflict — Factual and Legal Aspects at 432-436, May 2015, http://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf.

[3] The 2014 Gaza Conflict — Factual and Legal Aspects at 432-436, May 2015, http://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf.

it even goes as far as leveling blanket accusations at Israel, attacking it for using 'excessive force' and allegedly committing what it prejudicially and mistakenly refers to as "extrajudicial killings" (**para. 21**), without considering the particular context, relevant legal framework and immediate threat posed to life and limb in each situation.

Another example of this failure emerges in the Report's description of the situation in Gaza (**paragraph 49-52**), which entirely disregards the many sources of public information available concerning Israel's daily supply of humanitarian goods to the Gaza Strip, including regular updates by the Coordination of Government Activities in the Territories on their website,[4] Facebook page and Twitter account.[5] For example, 7,000 tons of medical supplies were transferred into Gaza in 2016.[6] On April 30th, 2017, 31,310 tons of goods entered Gaza.[7] Moreover, the Report fails to even mention, in the context of **paragraph 44 of the Report**, the findings of the UN's own Secretary General's report, which deemed Israel's naval blockade on the Gaza Strip as an entirely legal and legitimate measure given the threats that Israel has faced and continues to face from the de facto Hamas regime and other terrorists groups operating from Gaza.[8]

This pattern is repeated when reference is made to Israeli non-cooperation with certain bodies in the human rights system (**Report — para. 53-55**). In this regard, an impartial and fair analysis would have at least noted Israel's position that these circumstances of non-cooperation stemmed from the blatantly one-sided and politicized mandates and compositions of such bodies which included, for example, in the case of the Commission of Inquiry established following the 2014 Gaza Conflict, the appointment as head of this "independent body" a known anti-Israel activist who had been previously contracted as a consultant for the Palestinian side.

**To conclude**, the Report and Addendum fail to reflect an objective analysis, and instead demonstrate the embrace of the Council's own partisan activism and biased lens. Unfortunately, under these circumstances the Report does nothing to contribute to creating a space for peace but rather widens the gaps between the parties. In the process, by yet again using human rights mechanisms as political weapons, the reputation and credibility of the Human Rights Council and OHCHR have been further eroded, at the tragic expense of the noble cause of advancing human rights for all.

Please accept, Excellency, the assurances of my highest consideration.

(*Signed*) Aviva **Raz Shechter**
Ambassador, Permanent Representative

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[4] http://www.cogat.mod.gov.il/en/Pages/default.aspx.

[5] https://twitter.com/cogat_israel.

[6] COGAT Facebook page:
https://www.facebook.com/cogat.israel/photos/a.757361664359520.1073741828.724192144343139/1248864328542582/?type=3&theater.

[7] https://twitter.com/cogat_israel/status/858622056711278592.

[8] Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident September 2011, http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf ("Israel faces a real threat to its security from militant groups in Gaza. The naval blockade was imposed as a legitimate security measure in order to prevent weapons from entering Gaza by sea and its implementation complied with the requirements of international law.")